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Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

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In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/49/10 and A/49/355)

1. Mr. de SARAM (Sri Lanka), referring to chapter II of the report of the International Law Commission (A/49/10), said that, with the completion of the draft statute for an international criminal court, the Commission had fulfilled the mandate conferred on it by the General Assembly. Whatever action the Assembly and Governments now deemed it appropriate to take on the draft statute, the fact remained that, because of the Commission's efforts, the international community was now much closer to consensus on the question of the establishment of such a court than ever before.

2. The concept proposed and developed by the Commission - namely, that the court would not be a full-time body, but a permanent mechanism that could be called into action as and when needed; that it would be established by means of a treaty and would work in close cooperation with the United Nations; that it would coexist with, not detract from, the numerous international agreements on extradition and judicial cooperation and assistance; and that its jurisdictional coverage would reflect concern for the sovereignty of States and the prerogatives of national jurisdictions - appeared to be the most reasonable course. The establishment of an institution of such significance and scope would clearly require an amendment to the Charter of the United Nations.

3. However, while recognizing the usefulness of the concept proposed by the Commission, his delegation believed that it would be overly optimistic to convene immediately a conference of plenipotentiaries to consider the draft statute. Governments and their various ministries must be given time to gain a full understanding of the draft provisions and their ramifications. If such a conference was to succeed, extensive pre-conference planning would be absolutely essential. The key issues should be identified in pre-conference papers together with the various alternative solutions proposed.

4. As the report of the Commission made clear, the draft statute was to be annexed to a treaty which had yet to be drawn up. In its appendix I to the draft articles, the Commission indicated some of the matters to be covered by such a treaty, including the manner in which States parties would participate in the administration of the treaty and the court, and the financing of the court. In that connection, the special expertise of the United Nations budgetary authorities would be required. Other matters which must be addressed included the questions of whether reservations to the treaty should or should not be permitted, how disputes over the interpretation and application of the treaty should be settled, and the conditions for the entry into force of the statute. While such issues were not insoluble, negotiating a consensus on them would be time-consuming.

5. It was also unclear whether the technical provisions contained in a number of draft articles were satisfactory from the point of view of Governments. In particular, articles 20, 21, 23 and 25, which dealt with the court's jurisdiction, would require careful governmental review.

6. With regard to draft article 20, the following questions must be answered at the outset: (a) whether crimes within the jurisdiction of the court had already been defined under general international law in a manner applicable to individuals in accordance with the nullum crimen sine lege principle; and (b) whether the crimes were of such scope that they required international adjudication, national jurisdictions being, for one reason or another, inoperative.

7. An obvious solution to such questions would be an international code of crimes which would be generally acceptable and which would meet nullum crimen sine lege requirements. That would lend order and clarity to the substantive law to be applied by the court. However, a number of speakers had expressed the view that in its current form, the draft Code of Crimes against the Peace and Security of Mankind was too controversial to allow for such adjustments as would be necessary to make it generally acceptable. Despite that fact, his delegation believed that the prospects for negotiation of a generally acceptable code of crimes had been improved by the transfer of many of the jurisdictional and procedural aspects of the draft Code to the draft statute. Nevertheless, his delegation agreed with the Commission that work on the draft statute should not be delayed until such time as a generally acceptable code of crimes could be completed.

8. While there was no question as to the horrendous nature of the crimes referred to in draft article 20, especially in paragraphs (a) and (e), it was conceivable that there could be differences on whether the crimes referred to in paragraphs (b), (c) and (d) - namely, aggression, serious violations of the laws and customs applicable in armed conflict and crimes against humanity - had been adequately defined in accordance with the criteria mentioned earlier.

9. Turning to draft article 23 (Action by the Security Council), he said that it was uncertain whether the provisions of that article were necessary or appropriate. The draft article would introduce into the statute a substantial inequality between States parties to the statute, between States members of the Security Council and non-members, and between the permanent members of the Security Council and other States. Accordingly, it did not seem likely to encourage the widest possible adherence to the statute.

10. Moreover, the provisions of the Charter of the United Nations, especially those of Chapter VII of the Charter, would always prevail over any other international agreements between Member States, and thus over a treaty establishing an international criminal court. It was therefore unnecessary for the statute to reaffirm the primacy of the Charter.

11. If the Security Council believed that a specific matter should be referred to an international criminal court, an appropriate procedure for such referral

would undoubtedly be found. The prior limitations which draft article 23 would impose on the prerogatives of national jurisdictions were likely to raise concern and to increase States' hesitations about becoming parties to the statute. Accordingly, his delegation believed that, in lieu of draft article 23, it would be preferable to include in the statute a preambular paragraph, similar to the one contained in the annex (Definition of Aggression) to General Assembly resolution 3314 (XXIX), stating that nothing in the respective definition should be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations.

12. Lastly, he had been informed by the Treaty Section of the United Nations Office of Legal Affairs that the 1988 Protocol to the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation had entered into force on 6 August 1989; that should be taken into account whenever the draft statute was finalized.

13. Mr. MAIGA (Mali) expressed appreciation to the Commission for its completion of the draft statute for an international criminal court. With regard to the various proposed methods of establishing the court and its relationship to the United Nations, his delegation believed that a close relationship between the court and the United Nations would confer an international character and moral authority on the court. His delegation supported the convening by the General Assembly of an international conference of plenipotentiaries to consider the draft statute with a view to concluding a treaty establishing an international criminal court. While the treaty establishing the court would thus be binding only on States parties to its provisions, it could be linked to the United Nations system under Articles 57 and 63 of the Charter.

14. His delegation noted with satisfaction the provision in draft article 21 that States must expressly accept the court's jurisdiction for the court to have jurisdiction.

15. With regard to the draft Code of Crimes against the Peace and Security of Mankind, his delegation regretted the delays in the Commission's consideration of the item, which had been on its agenda since 1947. In order for the international criminal court to have at its disposal a legal framework which would contain definitions of the crimes referred to in article 20 of the draft statute, his delegation strongly urged the Commission to intensify its work on the draft Code.

16. Turning to chapter III of document A/49/10, his delegation noted with satisfaction the conclusion by the Commission of its consideration of the item, which had been on its agenda since 1971.

17. Mr. AREVALO (Chile) said that the establishment of an international criminal court corresponded to a clear need of the international community and would fill a vacuum in its legal structure; the court would operate alongside the International Court of Justice, which, under its Statute, played a different

jurisdictional role in administering justice at the international level. The need for such a court was clear from the proliferation of bodies which had been established as a result of specific situations, for example in the former Yugoslavia or Rwanda. Such tribunals were a valid but limited response to the lack of an international criminal court with competence to hold individuals responsible for serious crimes. The establishment of the court must be approached in a flexible, realistic and gradual manner; the best possible statute must be sought, rather than the ideal statute, so that a large number of States would support it, thereby providing the vital basis for its legitimacy.

18. In accordance with the preamble to the draft statute, the court was intended to be complementary to national criminal justice systems in cases where such trial procedures might not be available or might be ineffective. Increasingly, national courts were applying international instruments; thus, it should not be felt that the granting of universal jurisdiction to national courts, and judicial cooperation among States for the purposes of the administration of justice, would no longer be valid as instruments after the establishment of the court.

19. His delegation felt that the court should be established by means of an international treaty to which the largest possible number of States would be parties. That would provide the Court with its essential political and legal basis. A General Assembly resolution would not give the court a sufficiently firm foundation. Nor would it be satisfactory for the Security Council to establish an international criminal court. Moreover, for purely practical reasons, it would not be realistic to amend the Charter and establish the court as a new principal organ of the United Nations.

20. At the same time, however, the court must have a clear and close relationship with the United Nations, since that would afford it legitimacy and political backing. That relationship could be established initially through the adoption of the text by the General Assembly, subject to subsequent ratifications. Other links should be established with the United Nations with a view to the more effective functioning of the Court.

21. With regard to the court's subject-matter jurisdiction (art. 20), his delegation felt that the list in the annex should not exclude any international criminal treaty that was in force and that the court's jurisdiction should extend only to the most serious crimes contained in those treaties. The provision on admissibility in article 35 was an adequate safeguard. At the same time, a mechanism should be established to allow the inclusion of new treaties within the court's jurisdiction without the need to amend the Statute in each case. That situation could cover, for example, crimes committed against United Nations staff and related personnel.

22. His delegation could accept the division between inherent jurisdiction, in respect of the crime of genocide, and ceded jurisdiction, in respect of other crimes, and the idea that it was not necessary to be a party to the statute to accept the jurisdiction of the Court. That was an adequate solution at the current stage of development of international law, and it gave sufficient

flexibility to States parties. In respect of ceded jurisdiction, his delegation supported the idea that both the custodial State and the State on whose territory the crime was committed would need to accept the court's jurisdiction. The custodial State should be the State in which the accused had actually been detained and not the State or States to which orders for detention had been sent because they were believed to have jurisdiction to hear the case. His delegation supported the idea that the State of the accused's nationality should not be required to accept the court's jurisdiction. That State could not replace the territorial State, particularly in criminal matters, or the custodial State, for practical reasons. If the State of the accused's nationality was added to the list of States which were required to accept the jurisdiction of the Court, that would unnecessarily complicate the function for which the court was to be established. Although acceptance of the court's jurisdiction by the State which initiated an extradition procedure might seem excessive, that was totally consistent with the general spirit of the draft statute that the court was complementary to national courts.

23. With regard to the role of the Security Council under the draft statute, his delegation felt that article 23, paragraph 1, was acceptable, on the understanding that the Security Council would confine itself to referring a matter to the court and the court would initiate the investigation. That provision would enable the court, without the need for acceptance of its jurisdiction, to consider crimes covered in the statute perpetrated even in States which were not parties to the Statute where there was no possibility of administering justice through national courts. In such cases the Security Council, acting under Chapter VII of the Charter, could take a case to the court without having to establish an ad hoc criminal tribunal as had been the situation in recent cases.

24. With regard to paragraph 2, however, it was not acceptable that a complaint of or directly related to an act of aggression could not be brought unless the Security Council had first determined that a State had committed an act of aggression. Although legitimate under Article 39 of the Charter, such determination was political in nature and was subject to the exercise of the veto power. That situation would greatly limit the operation of the court, particularly since there could be a number of other crimes directly related to an alleged act of aggression which would also fall within the court's jurisdiction but might not be referred to it. It was not fully acceptable that such a determination should be made by the Court either since there could be differences of opinion between the two bodies which should be avoided. A new solution needed to be found. Similar problems arose in relation to paragraph 3; it was not appropriate that no prosecution could be commenced under the statute arising from a situation that was being dealt with by the Security Council.

25. With regard to article 39, subparagraph (6), it was not clear how it would be determined that a treaty was applicable to the conduct of the accused at the time the act or omission occurred: whether it would suffice for the treaty to have been in force at the international level, or whether it would also have to have been fully incorporated in the domestic legal system; and whether the countries which would need to recognize the court's jurisdiction would have to

be parties to the treaty in question. The draft statute should establish some criterion for making that determination.

26. Article 54, on the obligation to extradite or prosecute, contained a provision that was fundamental in most of the treaties included in the annex to the statute. However, in the text of the statute, the obligation was not extended to the crimes contained in article 20, paragraphs (a) to (d), namely crimes covered by general international law. Although that could be explained in respect of the crime of genocide, since only the State in which the crime had occurred had jurisdiction, the draft statute must provide for the obligation to expedite or prosecute in respect of the other crimes listed.

27. An element which could have been included in the draft statute was advisory jurisdiction of the Court. That type of jurisdiction had been very useful in the context of other international instruments and had been of great help for national courts in interpreting international instruments they were required to apply.

28. Although the Court was closely linked with the draft Code of Crimes against the Peace and Security of Mankind, his delegation felt that the Court should be established independently.

29. Mr. ODOI-ANIM (Ghana) said that the rationale for the establishment of the Court as stated in the preamble was consistent with Article 1, paragraph 1, of the Charter. There was therefore a connection between the effective operation of the court and the draft Code of Crimes against the Peace and Security of Mankind. Article 2 of the draft statute did not convey a sense of urgency in the establishment of a relationship between the court and the United Nations; the phrase "appropriate relationship" left room for varying degrees of interpretation which could have a negative impact on universal acceptance of and allegiance to the court. His delegation felt that article 2 could be merged with article 1 without jeopardizing the relationship of the court to the United Nations. It could accept articles 3, 4 and 5 as currently formulated.

30. The question of the jurisdiction of the court needed to be considered in the light of current and future political realities. The crimes referred to in article 20 usually had political underpinnings, and that could compromise the commitment of States to a strict and restrictive legal regime. To avert such a situation, articles 20, 21 and 22 needed to be further clarified.

31. The current draft was a commendable effort in the direction of ensuring individual accountability for acts against the international community, and Ghana agreed that that objective could be achieved by clear rules, particularly those relating to evidence, applicable sanctions and the rights of accused persons. Article 41 might require additional inputs which would provide the necessary psychological guarantees to offset any handicap that an accused person might encounter when appearing in an alien and culturally different environment to respond to criminal charges.

32. His delegation felt that further consideration needed to be given to article 44, paragraph 2, because, if the anticipated cooperation was unavailable, a vital component of the adjudication procedure would be incapacitated. Article 19, paragraph 1 (b), was more effective on the question of the rules of evidence to be applied. Article 46 must include more objective criteria, particularly in subparagraph (2).

33. His delegation could accept part 7 of the draft statute; it believed that States should coordinate their efforts in order to ensure the effective functioning of the court. However, any such cooperation must take due account of national criminal jurisdiction, bearing it in mind that it was not the aim of the Court to supplant national courts in the sphere of criminal jurisdiction.

34. Turning to the draft Code of Crimes against the Peace and Security of Mankind, he said that the new text of article 1 was acceptable; it provided a flexible definitional framework and could accommodate future developments and suggestions. Ghana felt that the first sentence of article 2 must be reformulated to recognize the link between the Code and the criminal codes of States. It agreed that the second sentence of the article should be deleted. It would comment on the rest of the Code at a later stage.

35. Recognizing the full significance of the work of the Commission, his delegation felt that at the current stage, issues of financial consideration should not be permitted to derail the collective efforts which, if pursued to their conclusion, would be of immense benefit to the international community.

36. Mr. MIKULKA (Czech Republic) commended the Commission's efforts to accommodate the views of States in order to provide a basis for the broadest possible acceptance of the draft statute. His delegation welcomed the recommendation regarding the convening of an international conference of plenipotentiaries.

37. If the draft statute was adopted by means of a treaty, there was a risk that the interval between its adoption and its entry into force would be fairly long. If, during that period, a situation arose resembling that in the former Yugoslavia or Rwanda, the Security Council would not be able to take advantage of the mechanism of the court and would be forced to establish an ad hoc tribunal; thus, one of the objectives sought in the establishment of the court would not be achieved. His delegation therefore felt that provision should be made for having recourse to the court on a provisional basis in such situations. The possibility of establishing the court as both a treaty body and a subsidiary organ of the Security Council, mentioned in paragraph 52 of the Commission's report, was only one possible solution. Another solution would be for the statute to provide for some kind of provisional application in situations covered by Chapter VII of the Charter, following the adoption of a Security Council resolution to that effect. Such a solution would further strengthen the organic link between the court and the United Nations.

38. There must be a close link between the court and the United Nations; however, that did not necessarily mean that the court should be envisaged as one

of the principal organs of the Organization. The link could not consist solely of the conclusion of an agreement between the Court and the United Nations as envisaged in article 2. It was above all functional and, as such, was established by the relevant articles of the statute concerning, in particular, the referral of matters to the court by the Security Council. Subject to those considerations, his delegation felt that, in principle, the solution to the problem of the link between the court and the United Nations as currently envisaged, in the draft statute was satisfactory.

39. On the question of the court's subject-matter jurisdiction, the current drafting of article 20 was an improvement on the previous draft, particularly in respect of crimes under general international law. It would be difficult to justify placing such crimes outside the jurisdiction of the court, particularly crimes directly linked to an act of aggression which were not currently defined in a multilateral treaty; that would be a step backwards. His delegation therefore noted with satisfaction that article 20 placed crimes under general international law on an equal footing with the crimes established under or pursuant to the treaty provisions listed in the annex. The list of crimes under general international law that were within the jurisdiction of the court, should meet the concerns of those who wanted such crimes to be defined more clearly. At the same time, the Czech Republic was pleased that the Commission had noted that there was considerable overlap between crimes under general international law and crimes under or pursuant to certain treaties and that article 20 (a)-(d) was not intended as an exhaustive list of crimes under general international law.

40. The Czech Republic was particularly satisfied to see that the crime of aggression had been included in the list of crimes within the jurisdiction of the court. According to article 20 (e), the court also had jurisdiction over crimes pursuant to the treaties listed in the annex to the statute. The treaties could be divided into two groups: those which defined certain acts as international crimes and those which provided for the suppression of undesirable behaviour constituting crimes under domestic law. It was clear that the urgency of bringing treaty crimes before an international court varied considerably. Article 20 (e) reflected his delegation's conviction that the jurisdiction of the court must be limited to the most serious crimes, those which the international community found most repugnant, and that the court should not be burdened by less exemplary matters.

41. In the earlier version of the statute, the court, with the exception of cases referred to it by the Security Council, had possessed only optional jurisdiction. However, that approach had failed to reflect fully the aims of establishing such a court. The current draft was more satisfactory. Optional jurisdiction had been combined with "inherent" jurisdiction and, at the same time, the court would continue to have jurisdiction over crimes referred to it by the Security Council.

42. The introduction of inherent jurisdiction was a step forward. It would show to what extent the international community was prepared to make the court a genuinely effective body. If States failed to accept even the minimum inherent

jurisdiction proposed under the current draft, the court's effectiveness would be called into question. His delegation agreed with Greece and Switzerland that the court should be vested with even broader powers of inherent jurisdiction. However, since the broadest consensus possible would be needed to establish the court, it was best to endorse the current solution and not press the issue.

43. Article 22 provided an "opting-in" system for accepting the jurisdiction of the court; the other methods of acceptance proposed previously had been eliminated. Under the current draft, the court had inherent jurisdiction in one area and could also have a matter referred to it by the Security Council; there was accordingly no practical reason to maintain the other systems for accepting the court's jurisdiction.

44. Article 21 (b) rightly specified that the preconditions to the exercise of jurisdiction by the court were acceptance of it by the custodial State and the State on the territory of which the act in question had occurred. Most of the treaties listed in the annex were based on the principle of universal jurisdiction. In theory, acceptance of the jurisdiction of the court by any State which was party to the relevant treaty should be adequate to establish the court's jurisdiction. In practice, it was best to clarify that the acceptance of two specific States was needed, as had been done in article 21 (b). However, it would be inadvisable to expand that list any further; to do so would make the preconditions too cumbersome and would limit the court's effectiveness.

45. The court was intended, to the extent possible, to replace ad hoc tribunals. In that connection, article 23, which provided that the court had jurisdiction over matters referred to it by the Security Council, was a fundamental provision which strengthened the link between the court and the United Nations. According to article 23 (2), a complaint of an act of aggression could not be brought under the statute unless the Security Council had first determined that a State had committed the act of aggression in question. His delegation viewed that provision as purely procedural in nature; it had no implications for substantive law. Although far from ideal, solution offered by article 23 was realistic and fully justified. Draft article 33 provided a satisfactory approach to the issue of applicable law by listing under that category the applicable treaties as well as the principles and rules of general international law. The two categories frequently overlapped and, as a result, the court could have recourse to the applicable law without being handicapped by the fact that a State was not party to a particular convention.

46. The court was naturally limited in terms of the rules of national law that it might apply. Clearly, such rules could not be applied where they failed to conform with international law. Defining any act or omission as a crime under international law must be independent of national law. The primacy of international law over national law, in the case of a conflict between the two, should be expressly stated in article 33.

47. The Czech Republic did not, however, share the view that national law was completely irrelevant. Indeed, jurisdiction <u>ratione materiae</u> included crimes defined by international instruments which provided for the suppression of those

crimes initially by means of national law. Moreover, all States had a common fund of law in the areas of the protection of fundamental rights and criminal procedure. Thus, while international law provided an adequate basis in terms of jurisdiction ratione materiae, related questions might necessitate recourse to national law.

48. Under article 25 (1), the right to lodge a complaint of genocide was limited to States which were party to the Convention on the Prevention and Punishment of the Crime of Genocide. That restriction could not be justified. Genocide was considered in the statute to be a crime under general international law and was the only crime within the inherent jurisdiction of the court. Accordingly, any States party to the statute of the court should be entitled to lodge a complaint relating to genocide.

49. It was both reasonable and realistic to limit the lodging of complaints to States which had accepted the court's jurisdiction and to the Security Council, acting under Chapter VII of the Charter. A more liberal system might discourage States from becoming party to the statute or accepting the court's jurisdiction out of fear that other States which had not done so might abuse their privileges.

50. Even if it did not accept the court's jurisdiction, a State party to the statute was bound by certain obligations which effectively complemented the system of jurisdiction.

51. In selecting the members of the court, it was essential to bear in mind the principle of equitable geographical representation. The international community must be careful that the unfortunate experience in that connection associated with the International Tribunal for the former Yugoslavia did not reoccur.

52. In conjunction with the elaboration of the draft statute, it was important to continue the efforts to codify substantive law, at least in respect of crimes falling within the court's jurisdiction. He therefore welcomed the progress that had been made by the International Law Commission on the draft Code of Crimes against the Peace and Security of Mankind.

53. Recent events had reaffirmed the topicality of establishing an international court to deal with individual criminal responsibility for crimes of international concern. The draft statute provided a solid basis for further work. His delegation endorsed the Commission's proposal to convene a conference of plenipotentiaries. It also endorsed the idea of setting up a preparatory committee for the purpose of arriving at generally acceptable solutions to questions that might give rise to difficulties at the conference. The preparatory committee must prepare the way for the conference rather than undermine it by fruitless and endless debate. For that reason a clear and precise mandate for the committee was an essential precondition to its establishment.

54. Mr. NEGA (Ethiopia) said that one of the Commission's significant achievements was the completion of the draft statute for an international

criminal court. Faced with current realities, including recent human tragedies in some parts of the world, the international community must see to it that those responsible for serious crimes of international concern were brought to justice and that similar tragedies did not occur elsewhere. While it was incumbent on Governments to bring such individuals to justice, the international community could complement and assist national efforts, in particular in situations where national authorities were not in a position to maintain law and order.

55. Article 2 of the current version, on the relationship of the court to the United Nations, required further review. The court should be independent, impartial and universal in its approach. It would be best to establish it as a subsidiary organ of the United Nations, thereby ensuring that adequate resources were available to it without compromising its integrity or independence.

56. According to article 6 (5), States parties to the statute should, in electing judges, bear in mind the principle of equitable representation of the main legal systems of the world. The principle of equitable geographical representation should also be emphasized in that context.

57. The most important provisions of the draft Statute were those concerning the jurisdiction of the court and applicable law. Ethiopia felt that the jurisdiction of the court ratione personae should be limited to individuals. Article 21 set forth the preconditions to the exercise of the jurisdiction of the Court over a person with respect to the crimes referred to in article 20. The issue of jurisdiction ratione personae needed to be addressed in a separate article, in an unambiguous manner.

58. The jurisdiction of the court ratione materiae was the most controversial issue in the draft statute. The draft had been substantially improved in that respect since the previous year. The Commission had incorporated the vital element of specificity into the draft by providing, in article 20, a complete list of the crimes over which the court would have jurisdiction. Two of the crimes on that list - the crime of genocide and serious violations of the laws and customs applicable in armed conflict - were clearly defined in the international instruments on those subjects. In contrast, two other categories of crime - the crime of aggression and crimes against humanity - were not clearly defined for the purposes of establishing the court's jurisdiction. In particular, its jurisdiction over the crime of aggression required further clarification. The Court's jurisdiction ratione personae was limited to individuals, while aggression was an act of State, as defined in the annex to General Assembly resolution 3314 (XXIX). The problem of establishing individual criminal responsibility for the crime of aggression was also implicit in article 23 of the draft statute, according to which a complaint related to an act of aggression could not be brought under the statute unless the Security Council had first determined that a State had committed such an act of aggression.

59. In view of those considerations and others pertaining to applicable law, his delegation was of the view that finalization and adoption of the draft Code

of Crimes against the Peace and Security of Mankind would contribute substantially to advancing the work on the statute.

60. The relationship between the proposed international criminal court and national courts was a matter which also merited close scrutiny. In that connection, his delegation failed to see the merit of paragraph 2 of article 42, which left open the possibility that, under certain circumstances, a person who had already been tried by one court could in fact be tried under the statute. That provision not only violated the principle of non bis in idem but also placed the court in a superior position vis-à-vis national courts.

61. With regard to article 23, Ethiopia felt that only States parties to the statute could and should be entitled to lodge a complaint with the court. Granting that right to the Security Council was inconsistent with the Council's mandate and contradicted the very nature of such a court, which would be established to deal with individual criminal responsibility. If, however, it was decided to accord the Security Council the right to refer cases to the Court, that same authority should be granted to the General Assembly in connection with matters falling within its mandate.

62. Mr. GOGOBERIDZE (Georgia) said that he wished to pay tribute to the efforts of the Commission and, in particular, to its Chairman and the chairmen of its working groups. The Commission had made considerable progress in its second reading of the draft Code of Crimes against the Peace and Security of Mankind. After its approval and entry into force, the Code should be administered by the proposed international criminal court.

63. His Government attached great importance to the establishment of such a court. Its existence would greatly strengthen the rule of law, which provided the necessary foundation for the development of fledgling democracies throughout the world and had been a prerequisite to Georgia's successful transition from communism to democracy and to full participation in the international community.

64. He looked forward to the establishment of a permanent jurisdictional body that would ensure that gross violations of international humanitarian law were punished, as they were to be in the former Yugoslavia and Rwanda. Georgia felt that such a court should be established under a multilateral treaty and that its relationship to the United Nations should be based on the conclusion of an agreement between the United Nations and the court. It also believed that the court should be a permanent institution sitting only when cases were submitted to it.

65. The court's jurisdiction was the pivot of the entire statute: it should address the most serious crimes threatening the international community, regardless of whether those crimes were covered by treaties specified in the statute or by general international law. He welcomed the fact that the court was to be complementary to national criminal justice systems and that the fundamental rights of the accused were assured. Georgia felt that a conference of plenipotentiaries should be convened in 1995, since the establishment of an

international criminal court was a project of great importance to the world community and should be proceeded with as fast as possible.

66. Ms. ARIFFIN (Malaysia) said that there was no doubt of the need for an international criminal court, as evidenced by the tragic events in the former Yugoslavia, Somalia and Rwanda. The setting up of a permanent judicial institution would be greatly preferable to the plethora of ad hoc tribunals to deal with such crimes.

67. The proposal that the court should be complementary to national criminal justice systems would go some way to allaying the concerns of some States regarding the possible usurpation of the jurisdiction of their national courts by the international criminal court. As for the relationship between the court and the United Nations, it was her delegation's view that it was an unfortunate omission not to have stated what the mechanism for the establishment of such a relationship should be. That issue, and the related question of budgetary arrangements, would need to be resolved if the process was to move forward. On the other hand, she welcomed the approach, in draft article 20 (a) to (d), of identifying the crimes under general international law which fell under the court's jurisdiction. The list of crimes should not, however, be exhaustive and, in addition to the crimes listed in the annex, her country believed that States parties to the statute should be able to agree at a subsequent stage on additional crimes to be included.

68. With regard to the acceptance by States of the court's jurisdiction, her delegation had previously argued in favour of the "opting-out" system, believing that States should not lose sight of the fact that the court's jurisdiction would be over individuals and not States. States had no need to feel that their sovereignty would be compromised, while the "opting-in" system imposed too many restrictions and would result in an ineffective institution. Her delegation was, however, persuaded by the argument that an opting-out regime would have the effect of preventing a State from accepting jurisdiction in respect of a complaint which had already been brought, which would be undesirable. If the majority of States felt that the opting-in procedure proposed by the Commission would have the effect of encouraging a larger number of States to become parties to the statute, her delegation would be prepared to accept the will of the majority on the matter.

69. Her delegation was intrigued by the provisions contained in article 23, conferring powers on the Security Council to refer crimes enumerated in article 20 to the court and imposing restrictions on the prosecution of the crime of aggression before the court unless the Security Council had determined that a State had committed such an act of aggression. Malaysia wished to study the implications of the article further. Lastly, her delegation supported the Commission's recommendation that a diplomatic conference should be convened. She shared the view of others that a decision on the date of such a conference should be decided at the current session. An appropriate date would be the latter part of 1995, which would leave sufficient time for consultations among Governments regarding the removal of remaining areas of difficulty in the draft statute.

70. Mr. LAHMIRI (Morocco) said that, in view of the significant increase in serious international crimes which often went unpunished, work on establishing an international criminal court should proceed with all possible speed, on the basis of a statute which would have the support of the widest possible range of countries. His delegation had no objection to the convening of a diplomatic conference on the matter in 1996, although it hoped that 1995 would be used effectively to finalize discussion on the instrument. It was to be hoped that the establishment of the court could give the interpretation and application of international criminal law a uniformity and coherence that they lacked under the present arrangement of ad hoc tribunals.

71. With regard to the composition of the court, he stressed the need for credibility, which would be achieved only if due regard was paid to the choice of judges. While welcoming the criteria established, his delegation was concerned that the qualifications sought - aiming for 10 judges with criminal trial experience and eight with recognized competence in international law - might create problems of recruitment. A simpler solution would be to appoint judges with expertise in both areas. The draft statute should establish the eligibility criteria and leave it to States to determine the question of judicial qualification. With regard to the jurisdiction of the court, his delegation believed that such jurisdiction should extend automatically to all the crimes listed in article 20, subparagraphs (a) to (d); the restrictions permitted under article 22 would serve only to undermine that jurisdiction.

72. The cardinal principle of criminal law was that no one should be convicted except under a specific law (nullum crimen sine lege). His delegation therefore strongly held the view that there should be a link between the draft statute and the draft Code of Crimes against the Peace and Security of Mankind. The highest priority should be given to elaborating a code on which all could agree. His delegation was glad that the Commission accorded the subject the same priority.

73. Morocco supported the recommendation in draft article 2 that the relationship between the court and the United Nations should be based on an agreement between the two. As for funding, given the inevitably high costs of the court's work, a serious cost-effectiveness study should be put in hand to weigh up the various financial considerations involved.

74. With regard to parts 4, 5 and 6 of the draft statute, his delegation believed that the rights of the accused were properly protected, since the articles concerned were largely based on the principal international human rights instruments. Some of the penalties proposed, however, were disproportionately lenient. The imposition of a fine for crimes characterized as serious was an issue which should be reviewed. Although there might be other points of disagreement regarding the draft statute, which were due to the complexity of the subject and the interpretation of various provisions, it was to be hoped that nothing would prevent the speedy establishment of the court.

75. Turning to chapter V of the report, dealing with international liability for injurious consequences arising out of acts not prohibited by international law, his delegation was pleased to note that the special situation of developing

countries had been covered in a general provision applying to all the draft articles on the matter. His delegation also supported the recommendation contained in paragraph 368 that a consortium of all States parties to the convention, or private operators of those States parties, should be created to bear the subsidiary liability. With regard to civil liability, some good ideas had been put forward, but he recalled that a well-functioning compensation mechanism existed, which should be taken into consideration. Similarly, it was clear that the operator bore liability in so far as he was in control of the activity and was the primary beneficiary. His delegation shared the Special Rapporteur's approach in that regard.

76. His delegation was pleased that, despite differences of opinion, the Drafting Committee had adopted 12 articles on prevention, although it would be desirable to clarify the second sentence of article 11, particularly with regard to the periodicity of authorization. Moreover, in article 12 there should be more emphasis on the role of the State in risk assessment. That role should consist in direct intervention in the evaluation process; it should not be acceptable for an operator alone to carry out such an evaluation. The same person could not be the judge and the judged. Only the State should have the right to undertake such an assessment. With regard to the sensitive issue dealt with in article 15, his delegation would prefer to see an amalgamation of articles 15, 16 and 16 bis into a single article, since they related to aspects of the same subject, namely notification and information, exchange of information and information to the public. Regarding article 17, security should not be made a pretext for concealing information or refusing to cooperate.

77. Lastly, with regard to the law and practice relating to reservations to treaties and State succession and its impact on the nationality of natural and legal persons, covered in chapter VI of the report, his delegation hoped that when those two subjects were dealt with, full consideration would be given to the practice and the interests of all countries.

78. Mr. KALITA (India) welcomed the continuing progress in the difficult matter of drafting a code of crimes against the peace and security of mankind, which was indispensable for the eventual establishment of an international criminal justice system. The draft Code might not be as comprehensive as he would wish, but it should incorporate those categories of conduct around which the greatest consensus among States could be built, providing effective deterrence against the commission of crimes specified in it. Other categories of conduct should, he believed, be left unaffected in international law. Although flexible about the manner in which the crimes contained in the Code were defined and therefore having no objection to the deletion of the words "under international law" in article 1, his delegation would prefer that the point he had just made should be reflected in the commentary. Moreover, the general definition given in article 1 was not very helpful, except in a limited sense. Such a definition should also indicate that the crimes proposed to be included should cover other categories of conduct, such as crimes against humanity.

79. With regard to the point made by the Special Rapporteur in draft article 2, on characterization, he agreed with those who suggested that the code should not project any conflict between characterization of a form of conduct as a crime under the code and the manner of characterization of the same conduct as a crime under national or international law. Most of the crimes suggested for inclusion in the code were also crimes under national law of States in any case, or should be once the code was adopted by a State.

80. Regarding article 3, on responsibility and punishment, he considered it quite obvious that the person committing a crime and those assisting or abetting in that crime were equally punishable. The article could draw considerable support from the various international and bilateral conventions on the suppression of crime. He added that concepts like "attempt" should not be defined within the code, but should be determined by the Commission in specific cases on the basis of generally recognized practice.

81. Article 4, on motives, was important and it would not be desirable to delete the article. Persons who committed crimes should not be able to argue that they committed the crime for political reasons and should therefore be immune from punishment. A distinction could be drawn between "motive" and "intent", but that could not extend to racism or, in particular, national hatred, which were not generally cited as exceptions in any similar instrument. Any such reference to extraneous considerations would make the article liable to be rejected as being unacceptable. Moreover, "extenuating circumstances" were not synonymous with "motive". Extenuating circumstances could not be a reason not to treat a particular act as a crime, though they might be considerations for lessening punishment once a crime had been established. The scope and conditions under which "exceptions", "motives" and "extenuating circumstances" could be pleaded should be clarified.

82. While appreciating the conceptual difficulties inherent in article 5, which dealt with the responsibility of States for crimes committed by its agents or agencies, his delegation believed a way should be found to specify the exact nature of the responsibility or liability of States, either in the article itself or in the commentary. Indeed, the purport of article 5 seemed to be inconsistent with article 19 of part 1 of the draft articles on State responsibility. Since it was customary to speak of the responsibility of States in the context of their obligation to pay compensation or make reparation to victims of violations of international law, the article under consideration should avoid any direct implication regarding a concept of crimes of States which was yet to be decided. Furthermore, in the case of crimes of aggression, a State obliged to make reparation for damage caused might not have adequate resources to provide full compensation to the victims of that aggression, having itself suffered grievous economic loss owing to its own action and to the countermeasures taken against it. Any compensation regime should be equitable and reasonable, keeping in view the circumstances and paying capacity of the State responsible.

83. Article 6 incorporated the established obligation to try or extradite. The provision dealing with simultaneous requests from different States for

extradition under the article should not, however, be drafted in a mandatory manner concerning the priority to be given to the principle of territorial jurisdiction. He therefore suggested that in article 6, paragraph 2, the word "shall" should be replaced by "may". Article 6, paragraph 3, could also be redrafted advantageously to emphasize the fact that the obligation to try or extradite should not prejudge or prejudice the jurisdiction of any international criminal court as and when it was established. The current wording appeared to emphasize the establishment of the court, which was a matter of policy on which no final decision had yet been taken.

84. With regard to draft article 7, several States had advocated some relaxation of the rule of non-applicability of statutory limitations. All States, however, had advocated some flexibility with regard to the length of time after which statutory limitations should apply. His delegation believed that, for practical reasons relating to prosecution and the need for sound administration of justice, there must be solid grounds for any decision to make statutory limitations non-applicable in certain cases. The United Kingdom's observation that the suggested rule could hamper attempts at national reconciliation and the amnesty of crimes should not be forgotten. Given that the essential aim of drafting the code and establishing a permanent international criminal court was deterrence and preservation of peace and security, it was also possible to provide for withdrawal of prosecution in the interests of securing that aim.

85. The report proposed little of substance with regard to articles 8, 9 and 10. Article 8, which, as it stood, represented the bare minimum, should include the full range of generally recognized principles, arranged by categories, as established in international or regional instruments. His delegation also wondered whether the rule of specialty should not appear either in article 8 or elsewhere in the draft.

86. Article 9, embodying the fundamental principle of non bis in idem, raised three important questions. First, should a trial in one court prevent trial in another court? Secondly, should a trial in a national court be a bar to trial at an international court? Thirdly, in what circumstances could a trial be regarded as a fake trial? The solution proposed by the Special Rapporteur in paragraphs 3 and 4 of the article adopted at first reading had elicited well-nigh irreconcilable reactions from Governments. The Special Rapporteur stated categorically only that a national court was not competent to hear a case already tried by the international criminal court - a view shared by his delegation, not so much because it believed that allowing a national court to hear such a case could destroy the authority of the international court, but because it considered it desirable to encourage and consolidate the possibility of establishing an international criminal court. In any case, courts at the national level should continue to exercise their jurisdiction until such time as the international criminal court had become fully recognized and effective.

87. The new text did not solve the problem, because the references to ordinary crimes and fake trials themselves raised some complicated questions. In his delegation's view, the reference to ordinary crimes was connected with the

characterization of conduct as a crime under national law, as opposed to its characterization at the international level. Genocide, for example, should not be treated on the same basis as homicide as perceived in internal law; and the characterization of conduct under internal law should not be an obstacle to prosecution at the international level. Consequently, the non bis in idem principle should not be invoked.

88. The problem of fake trials was a real one, and could not be solved by encouraging a multiplicity of trials. In any case, a second trial was only a theoretical possibility, unless it were to take the form of a trial in absentia, a procedure contrary to the concept of respect for the rights of the accused. The principle of retrials should in any case be closely analysed, with proper respect accorded to all legal systems and ideas of justice, irrespective of the cultural, religious and social backgrounds they represented.

89. Article 9, paragraph 2, as adopted on first reading, had suggested that imprisonment was the only valid punishment. His delegation had an open mind on the question whether community work would be an appropriate penalty in the context of serious crimes. The question of the enforcement of penalties required careful consideration.

90. In the light of the considerations noted in paragraph 166 of the ILC report (A/49/10), his delegation supported article 10, on non-retroactivity. With regard to articles 11 to 14, one legitimate view was that the Code should not provide for possible defences and extenuating circumstances in the case of such serious crimes. Any available defences and relevant extenuating circumstances must be specified in the Code, and not left to the discretion of the judges. Moreover, the Commission should deal not only with extenuating circumstances but also with aggravating circumstances. In order to avoid the charge of having drafted the Code in undue haste, it should find the necessary time to group together the various relevant factors mentioned under articles 11, 12 and 13. One easy solution, however, would be to regulate such matters through national jurisdiction - an approach advocated by the Governments of the United Kingdom and Paraguay.

91. The reference to a competent court in the draft article 14 adopted on first reading had not made it clear whether a national or an international criminal court was referred to. That question was not clarified in the new article 15. If a national court was to be competent, then it was fair to assume, as Belarus had suggested, that the crimes should be punished in a manner commensurate with their extreme gravity.

92. The report mentioned various factors that might constitute extenuating circumstances, defences or aggravating circumstances. While it had no objection to treating those factors appropriately, his delegation recommended that wherever it was necessary to repeat the same factor, the scope and manner in which it could be invoked should be specified in the commentary. It was also worth noting that articles 11, 12 and 13 appeared to have no counterpart in the draft statute for an international criminal court or in the Statute of the International Tribunal for the former Yugoslavia. Where the concepts referred

to in those articles were reflected in the draft statute or the Statute of the International Tribunal, they had been accorded a different emphasis.

93. In article 11, the draft code indicated that an order of a Government or a superior could be pleaded as a defence if it had been impossible for the offender not to comply with that order. In the Statute of the International Tribunal, such a situation was regarded as a mitigating circumstance, but did not confer total exemption from punishment. His delegation favoured the approach adopted in the Statute of the International Tribunal.

94. Article 12 required the superiors to take all "feasible" measures to prevent or repress the crime, whereas the corresponding provision of the Statute of the International Tribunal required "reasonable" measures to be taken. The Statute also provided for the test of knowledge or reason to know as grounds for fixing responsibility of the superior. In his delegation's view, the discrepancy between the tests employed might create confusion. The Commission must make an effort to provide uniform guidance in specifying what tests were involved.

95. Under article 13, the fact that the person committing the crime acted as head of State or Government did not relieve him or her of criminal responsibility. However, the Statute of the International Tribunal had envisaged that factor as a mitigating circumstance for purposes of punishment. Furthermore, it should be noted that, in the view of some Governments, the offender's status as head of Government should actually be regarded as an aggravating circumstance. Once again, there was a need to harmonize the concepts involved; and also to specify the exact consequences for the head of State when crimes on behalf of a State were involved or when they were committed in his or her name. In his delegation's view, the head of State should be able to show, by way of defence, or as extenuating circumstances, that clear instructions had been issued to prevent the commission of the crime, and that they were supported by effective machinery to enforce them. Circumstances rendering the head of State's authority purely notional should also be an extenuating factor.

96. While self-defence, coercion and state of necessity were mentioned as defences in article 14, the Statute of the International Tribunal had no similar provision, and the draft statute for an international criminal court referred to those circumstances only for purposes of determining the gravity of the crime for purposes of punishment. Once again, some of those defences might be treated as mitigating circumstances, rather than regarded as absolving the offender from criminal responsibility.

97. There was also room for further clarification of the factors involved in determining the extenuating circumstances referred to in article 15 on the basis of national practice and criminal law doctrine.

98. While commending the Commission for its important work in developing the draft Code of Crimes, his delegation noted that a number of questions had still to be resolved. He singled out the following: (i) Should there be a code for a

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limited number of crimes? (ii) Given the broad range of crimes to be included in the Code, should its title refer only to crimes against "the peace and security of mankind"? (iii) Should the Code be confined to crimes committed by individuals, or should it extend to crimes committed by States? (iv) Was the Code to be implemented through national legal systems, or through an international mechanism? In the latter event, how were punishments to be prescribed and implemented? (v) What was the relationship between the court and the Code? (vi) What should be the status of the Code in the internal law of the States parties to the court? (vii) Should there be a provision on settlement of disputes within the convention containing the Code? His delegation had already offered its views on some of those issues, and was confident that the Commission would complete its consideration of the topic during the term of office of its current members.

99. Mr. AL-BAHARNA (Bahrain) commended the Commission for completing its second reading of the draft articles on the law of the non-navigational uses of international watercourses. At its forty-sixth session, the Commission had considered the second report of the Special Rapporteur, which had, inter alia, proposed the inclusion of "unrelated" confined groundwaters within the scope of the project and the induction of a new article 33 concerning the settlement of disputes.

100. The Special Rapporteur's study on "unrelated" confined groundwaters at the Commission's request had revealed little by way of "hard law" that was of practical use to the Commission. As the Special Rapporteur acknowledged, State practice on the management of groundwater resources had been found to be lacking. Admittedly, the United Nations had exhorted States to carry out studies to explore the potential of groundwater basins and resources; but that did not warrant the inclusion of "unrelated" confined groundwaters in the draft articles in the absence of a thorough understanding of the implications of the subject. His delegation was not opposed to the codification and development of the topic of "unrelated" confined groundwaters. It was not sure, however, whether the topic could be included within the scope of the draft articles, and it thus supported the Commission's decision not to include it.

101. Concerning the settlement of disputes, the Special Rapporteur remained convinced that, at a minimum, a tailored, bare-bones provision on the settlement of disputes was an indispensable component of any convention the Commission would put forward on the current topic; and had thus proposed a new article 33, which advocated consultations and negotiations as a preliminary step, failing which the parties could have recourse to fact-finding or conciliation, followed by arbitration or adjudication accepted by all the parties to the dispute. During its forty-sixth session the Commission had refined those proposals and had adopted article 33. That article, which followed the now well-established United Nations practice of including fact-finding procedures and a consensual compromissory clause, was acceptable to his delegation.

102. The draft articles on international watercourses adopted by the Commission on second reading constituted a turning-point in its work, codifying pre-existing law while progressively developing it. They offered the best

possible norms for regulating the several uses of water in international watercourses, and for keeping the waters free from pollution - a daunting challenge in the light of estimated urban water needs in the year 2000.

103. It should be stressed that the draft articles sought to resolve the conflict of interests of all basin States in the use of waters by reference to the principle of equitable and reasonable utilization. All watercourse States were obliged to utilize an international watercourse in such a way as not to cause significant harm to other watercourse States, and procedural rules were laid down governing the substantive rights of those States. Remedies were prescribed for redressing grievances and resolving disputes. The draft articles thus contained a set of balanced provisions suitable for a framework convention. Watercourse States now had a set of international norms that could be adapted to the individual requirements of a particular international watercourse. His delegation commended them to all States, and would support a resolution for the adoption of a convention on the law of the non-navigational uses of international watercourses by the General Assembly or by an international conference of plenipotentiaries.

104. Turning to the topic of State responsibility, he said that his delegation was gratified to receive the assurance that the Commission would be able to conclude on time its first reading of the draft articles on State responsibility. It urged the Commission to give high priority to that item, which had been on its agenda for too long.

105. On the question of the consequences of crimes vis-à-vis State responsibility, the central question was whether or not the draft articles on State responsibility should deal with the consequences of crimes of States, as stated in article 19 of Part One. Article 19 left much to be desired from the conceptual point of view. It was somewhat imprecise to treat international delicts and international crimes together, given the differences in their nature and their effects. While an international delict entailed bilateral or multilateral breaches of international obligations, an international crime was a breach of obligations erga omnes causing injuries of physical and mental nature to people at large. It was true that the concept of crimes of States was not fully developed. But history testified to crimes committed by States: aggression, genocide and apartheid were examples of such crimes. If in a given instance those crimes were acts committed by individuals, and not by States qua States, then the question of responsibility of a State arose, as had been postulated by article 5 of the draft Code of Crimes against the Peace and Security of Mankind. In either case, there could be State responsibility for international crimes.

106. In his fifth report, the Special Rapporteur had examined the question whether the United Nations organs were empowered to determine the existence, attribution and consequences of wrongful acts contemplated in article 19, and whether the existing powers of the United Nations organs should be adapted to those specific tasks. The reactions of members of the Commission to those questions had varied. With regard to the first question, his delegation wished to say that the United Nations could not, like nation States, impose sanctions

in respect of international crimes. The enforcement action contemplated by Chapter VII of the Charter was specifically geared to the objectives of its Article 39. It was not possible to assert categorically that Chapter VII operated as a sanction mechanism in international relations. With regard to the question of adapting the powers of the United Nations organs, he doubted whether such a course was possible in the prevailing world political and economic conditions. Any attempt at so adapting them would in any case involve a study of the primary rules of international law. It could be objected that, in engaging in such an inquiry, the Commission would be transgressing its mandate.

107. Notwithstanding those misgivings and caveats, situations had arisen resulting in aggression, genocide and apartheid, in which the Security Council had been compelled to act as a mechanism of sanction. Ways and means should be found of articulating norms regulating the consequences of those heinous international crimes from the point of view of State responsibility. It would, however, need to exercise care in specifying both the substantive and the procedural rules with regard to the legal regulation of the crimes concerned. As those crimes provoked differing reactions within the community of States, they should be dealt with separately, under different articles.

108. Turning to the item "International liability for injurious consequences arising out of acts not prohibited by international law", he noted that the report referred to the special situation of the developing countries and the role of international organizations with regard to the proposed legal regime of prevention. Bahrain believed that the developing countries were at a disadvantage in assessing or monitoring activities involving a risk of transboundary harm, and would welcome an article on developing countries in the general provisions so long as it adequately safeguarded their interests. The Commission should also explore the possibility of giving a positive role to international organizations in the proposed legal regime.

109. The general debate in the Commission had underlined the importance of adopting expeditiously a set of articles on the legal regime of prevention. His delegation agreed that there was sufficient legal basis in State practice for the articles on the proposed legal regime. Of the articles approved by the Commission during its forty-sixth session, article 1 was probably the most important. The draft articles applied only to activities which involved a risk of causing significant transboundary harm. The definition of "risk of causing significant transboundary harm" contained in article 2, paragraph (a), provided a workable yardstick for understanding the term. The subjective element might not be altogether eliminated, but it was to be hoped that the States concerned would interpret article 2 (a) in such a way as not to subvert the regime being established.

110. Regarding article 12, it appeared that the prevailing view in the Commission was to leave the specifics of what ought to be the content of assessment to the domestic laws of the State conducting such assessment. Article 14 on measures to prevent and minimize the risk had an important function in the regime of prevention. It required States to take all measures - legislative, administrative and others - for the purpose of preventing or

minimizing the risk of transboundary harm. The standard of obligation with regard to prevention was "due diligence", a well-recognized principle of international law. His delegation supported article 16 bis and its underlying democratic principle.

111. With regard to article 17, his delegation supported fully the exemption on the grounds of national security, but would like the Commission to explore further whether the ground of industrial secrets should be retained and if so, under what conditions. Article 18 on consultations on preventive measures was without doubt one of the most important preventive measures contemplated, and appeared generally fair and equitable. Article 20, specifying or enumerating the factors involved in an equitable balance of interests, would be of practical assistance to States involved in activities causing a risk of transboundary harm; therefore, his delegation had no hesitation in supporting it.

112. The articles, on the whole, were balanced and conformed to general principles of international law and new trends in United Nations practice. The Commission deserved commendation for producing a set of well-drafted articles on prevention.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

113. The CHAIRMAN announced that Armenia, Australia, Belize, Cameroon, Chile, Costa Rica, Georgia, Guatemala, Latvia, Lebanon, Micronesia (Federated States of), Mongolia, Nicaragua, Nigeria, Papua New Guinea, Republic of Moldova, Romania, Turkey and Venezuela had become sponsors of draft resolution A/C.6/49/L.3 submitted under agenda item 140.

The meeting rose at 6.30 p.m.